

FALSE KILLER WHALE TAKE REDUCTION TEAM LESSONS LEARNED REPORT

**PREPARED BY CONCUR, INC.
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BACKGROUND:

From February to July 2010, the National Marine Fisheries Service (NMFS) convened the False Killer Whale Take Reduction Team (referred to as Team or TRT) to identify management actions likely to reduce bycatch of false killer whales in Hawaii longline fishing gear.

On July 19, 2010, consistent with the deadline set forth in the January 19, 2010 Federal Register notice, the 19-person Team, comprising fishermen and fisheries interests, conservationists, state and federal agencies, gear specialists and researchers, submitted to NMFS a consensus-supported draft Take Reduction Plan that outlined a series of management actions, research priorities and other steps. The draft Plan, endorsed by all Team members, was the culmination of intensive Team deliberations that included four in-person meetings in Hawaii and numerous work groups and teleconferences over the six-month span.

This brief report seeks to assess the Team's deliberations to-date, drawing on confidential interviews with 18 of the 19 Team members¹ to better understand the strengths and limitations of the Team's work to-date and identify strategies for improving deliberations as it moves forward. (See **Attachment 1** for a listing of interviewees.)

The telephone interviews, conducted and synthesized by CONCUR, Inc., the environmental dispute resolution firm that served as the neutral facilitator for the TRT's deliberations, sought Team member reflections on the topics listed below. (See **Attachment 2** for a listing of the interview questions.)

- General feedback on Team deliberations and effectiveness
- Factors that helped and hindered team success in building consensus
- Information needs
- Project staffing
- Team composition
- Meeting management and logistics
- Future challenges

Importantly, the focus of this document is on the process used to develop the plan; it is not meant to evaluate or forecast the effectiveness of the plan's implementation. Moreover, this summary is not intended to reflect all comments raised during the interviews. Rather, it is intended to capture the primary themes raised in discussion with TRT members.

¹ Attempts were made over a two-month period to interview all 19 Team members. One member – Clint Funderburg– was not available to be interviewed.

KEY FINDINGS:

Below is a summary of the key findings generated by the interviews. These interviews are summarized in four categories.

- Key Factors Supporting Productive Team Dialogue
- Primary Concerns Regarding Team Deliberations To-Date
- Future Challenges and Needs
- Recommendations Moving Forward

Key Factors Supporting Productive Team Dialogue

Most broadly, the TRT process was considered to be highly effective, with many of those interviewed noting that both the deliberations and the end result greatly exceeded their expectations. As one participant put it: “It was a hard negotiation, but a good negotiation and a good product. I think everyone should feel good about where we are.” Interviewees keyed on three overarching factors for the better-than expected results:

- ***Team composition.*** Interviewees repeatedly cited the strength of the Team members – both collectively and individually – as the most crucial factor in the Team’s success. As a group, the Team was seen as bringing the right mix of expertise and perspectives to the table. “People from all perspectives wanted to accomplish something,” said one TRT member. Moreover, many of those interviewed said that the open-mindedness of their fellow Team members – and the ability of a few participants in particular to reach across the table at critical times and strike a common vision and approach with their colleagues – helped build the trust essential to forging a consensus plan. As one person said: “For the most part, people really seemed to be listening to one another. No one seemed to be there to blow up the process.” As another person put it: “No one was being dogmatic.” One individual also complimented the mix of within-state and outside-Hawaii participants.
- ***Solid staff support.*** Team members repeatedly stressed the importance of the support provided by NMFS staff during and between deliberations. Team members cited the unprecedented level of real-time data-crunching and other support conducted by Science Center staff, as well as the tireless efforts of the Observer Program to mine its data for trends to support the Team’s deliberations. “People seemed to reach out far to get information from everywhere,” as one interviewee said, echoing many Team members’ appreciation for the extent of background materials and data provided to the Team. (Veterans of other TRTs noted that the level of data and corresponding analysis provided was unprecedented as compared to other Teams.) NMFS staff around the table was seen as providing clear and helpful sideboards regarding its regulatory responsibilities – a key motivator and “reality check” that kept the Team pressing for a consensus solution. “They kept reminding us that the NMFS would make a rule if the Team failed to reach agreement,” said one Team member. “It really helped focus the thinking of the Team and they did it in a not too heavy handed way.”

- ***Meeting structure and flexibility.*** The meeting approach – a blend of formal around-the-table sessions coupled with across and within caucus deliberations and informal after-hour get-togethers – was seen as pivotal in helping Team members build a common base of understanding and get to know one another personally. “The social time upfront was really pivotal,” said one participant. “We truly got to know each other and hear what was important to one another.” CONCUR was also cited as striking a helpful balance between keeping the group on-track and carving out unscheduled time for extended deliberations or small group huddles. “I expected 20 to 30 people in the room yelling at each other,” said one participant. “That wasn’t it at all. The process was really smooth, really focused.”

Other factors cited by interviewees as helping the Team reach consensus and engage in productive deliberations included the following:

- The tight six-month deadline, which – as one interviewee put it – eliminated the opportunity for “dithering.”
- Shared interest by parties to reach an agreement rather than have one imposed upon them by NMFS. As one interviewee said: “People knew that a plan was going to happen. They didn’t want it to happen without their input.”
- The willingness and ability of the two attorneys on the Team to draft and codify – under tight time constraints – the complicated consensus recommendation struck at the final meeting.²
- NMFS participation at the fishery outreach meeting, which was seen by all participants (and industry in particular) as being an extremely constructive dialogue.
- The role of some of the TRT “veterans” in helping guide deliberations forward and encourage strategic use of caucusing.
- The Team’s collective commitment to use the modeling results to inform but not drive its deliberations. As one interviewee said: “It was instructive, but no one took it as gospel.”
- The likelihood of lawsuits if the Team failed to reach consensus.

Primary Concerns Regarding Team Deliberations To-Date

Despite the strong results and feedback, Team members highlighted several aspects of the Team’s deliberations that were seen as problematic. These issues – centered primarily around information-sharing, data limitations and Team member participation – have the potential to impact the effectiveness of ongoing Team deliberations and recommendations. Below is a synthesis of the key concerns cited in the interviews.

² This was a particularly noteworthy finding, since several of those interviewed said they were initially concerned that the inclusion of attorneys on the Team might be counterproductive and lead to more positional deliberations.

- **Data-sharing.** Information-sharing remains somewhat of a flashpoint. Several Team members raised strong concerns regarding the Agency's decision not to provide draft Science Review Group (SRG) minutes until pressed by fisheries representatives at the final Team meeting. Failure to provide these data, they said, undermined agency credibility and, at least according to one person, may well have impacted the nature of the final agreement (i.e., fishermen may have been less willing to agree to a year-round closure of the winter box). These Team members emphasized the critical need to provide the Team with "all relevant data, warts and all," and at least one Team member said he will press for a process to be put in place to bolster all participants' confidence in the data. Other data-sharing concerns center around confidentiality limitations (current NMFS guidelines requiring data aggregation to prevent the disclosure of identifying information are seen by some as too stringent and keeping important Observer Program data from the Team), and a perceived lack of equal access (Team members who are part of the SRG have an opportunity to review data and analyses before they are published and readily available to others).
- **Gaps in participation.** While the Team's composition was uniformly seen as a crucial strength, interviewees did voice some considerations related to membership. Most importantly, patchy participation by some Team members was seen by several interviewees as undermining the Team's overall effectiveness and continuity, as the Team did not benefit consistently from their expertise and perspectives. Additionally, several interviewees voiced concern that the lack of broader ethnic representation of the fisheries (in particular, Korean-American participation) could impact eventual plan implementation and effectiveness. Other participation-related issues mentioned included the following: (1) lack of identified alternates for all primary members; (2) limited participation in Team discussions by some Team members; (3) the failure to include NMFS Sustainable Fisheries staff as a member at the primary negotiating table; and (4) the need for shortline and kaka line fishermen to be at the table if and when the TRT focuses discussions on insular stock.
- **Solution not fully grounded in data.** For some participants, aspects of the Team's consensus recommendation seems somewhat untethered from solid data and analysis. A handful of those interviewed voiced concern that the agreed-upon management actions did not always appear to have a solid basis in the analysis and seemed in places (i.e., inclusion of the winter box closure but failure to mandate immediate weak hook implementation) to be overly grounded in parties' eagerness to strike a compromise. "In the end," as one Team member put it, "it seemed like the politics and the art of the deal was more important than the actual scientific underpinning." There was also a sense voiced by at least one Team member that some people acted like the fishermen "had to be punished" – even if the data didn't demonstrate that certain management actions were likely to yield measurable conservation benefits.
- **Pre-meeting preparation.** Though, for the most part, Team members broadly complimented and appreciated the extent of pre-meeting preparation undertaken by NMFS and others, interviewees cited several instances where the lack of upfront preparation tripped up Team deliberations. Most notably, several people said, the lack of

clear, early guidance regarding how the Team was to treat PBR within and outside the EEZ unnecessarily clouded Team deliberations. A few Team members also expressed frustration that NMFS did not anticipate some of the analyses and summaries that proved to be of interest to the Team – a move that one individual said might have helped to limit some early-on wheel-spinning. Finally, some interviewees called for upfront briefing materials to be accompanied by succinct summaries highlighting main take-away points.

Other concerns to-date mentioned in the interviews centered on the following:

- Frustration among some that the Team did not spend more time considering the kaka line and shortline fisheries during the Team’s deliberations, nor have access to what they considered to be more meaningful data from the State of Hawaii.
- Recognition that the continued lack of robust abundance data continues to prove a significant challenge, particularly since assumptions underlying various false killer whale population projections are often at-odds with fishermen’s at-sea experiences.
- Discomfort that some around the table were not always clear or consistent regarding what role they were playing as part of or in support of the Team. This fed the perception that some participants, at times, were being obstructionist or unduly defensive. There was also a concern among some not in the primary conservationist or fishery caucus that it was “tough to get in there sometimes and feel like you’re getting heard.”
- Parties’ varying abilities to stay on topic and, as needed, shift to new discussion points to avoid getting bogged down in unproductive deliberations. Similarly, there were some who felt the Team spent too much time discussing “speculative “ fixes rather than (1) focusing on the best available science and (2) pressing sooner for more realistic draft TRP elements.
- The extent to which the Ground Rule regarding interaction with the press was commonly understood and adhered to by Team members.
- The lack of language in the Ground Rules to address situations where a Team member has a change in affiliation. This issue encompasses both disclosure requirements and protocols for replacing such participants.
- The limited time (72 hours, including a weekend) between the Team’s last meeting and the deadline for the draft TRP – a scheduling snag that resulted in last-minute rushing and a sense, among some, that they did not have sufficient time to review the final agreement.
- Inability of General Counsel staff to attend all deliberations, which limited the Team’s ability to receive real-time input into legal questions.
- Limited consideration of false killer whale acoustics as the source of possible solutions.

Finally, while most Team members thought the mix of on- and off-Oahu venues was appropriate and helped foster Team cohesion, Team members in general did not see an immediate need to hold follow-on meetings outside of Oahu. Possible exceptions centered on the following: (1) if there are particularly thorny issues demanding more focused Team deliberations; or, (2) if a non-Oahu venue is likely to help encourage participation of kaka and shortline fishermen or other relevant interests.

Future Challenges and Needs

Interviews with Team members painted a nuanced assessment of the road ahead: optimism tempered by a pragmatic understanding of the many barriers to successful implementation. Below are the key challenges identified in the assessment interviews.

- ***Final rule focus and timing.*** Several Team members emphasized the importance of moving forward with the proposed rule in a timely fashion and with little deviation from the draft TRP. Significant changes and/or delays, several interviewees said, risk undermining both Team cohesion and the potential for near-term progress. Same for budget shortfalls that have the potential to impact the look and feel of the final rule. As one Team member put it: “NMFS has to move forward with implementation....because, if not, the more time the Plan goes by, the easier it is for the rationale and pieces to fall apart.”
- ***Uncertain effectiveness of Plan elements.*** Numerous interviewees cited the uncertainty of plan effectiveness as the greatest challenge facing the TRT. Among the chief unknowns: the likely impact of weak hooks on both target catch rates and false killer whale interactions; the extent to which there will be sufficient funding to implement key aspects of the Plan (weak gear experiments, observer coverage levels, regularly scheduled team meetings, State of Hawaii data generation, etc.); and the need for credible and targeted monitoring strategies to assess Plan effectiveness.
- ***Persistent concerns about data quality.*** The consensus-supported Plan offers a clear implementation path forward, but it does little in the near-term to eliminate underlying data-related concerns. Said one interviewee: “NMFS will need to continue taking steps to increase confidence in data.” As noted earlier, some Team members remain frustrated by the approach to data-sharing and are likely to press NMFS for greater transparency in sharing and analyzing data. This is likely to manifest itself initially as the results from the 2010 *Sette* survey become available, but it will continue as the Agency collects future data on interactions and Plan effectiveness. As one Team member said: “I will require very substantive confirmation of everything that’s put forward....I’m not willing to take things for granted anymore.” Other data-related challenges cited in the interviews center on the following:
 - Continuing outreach efforts with fishermen to explain the risks to the false killer whale population;
 - Building understanding and agreement on assumptions underlying NMFS modeling and projections; and

- Working productively in what is sure to remain a “data uncertain” environment. Said one Team member: “We just have to keep relying on the best available information and that isn’t always satisfying.”
- ***Adaptive nature of Plan implementation.*** Implementation of a Take Reduction Plan is inevitably an adaptive process. The Plan is put in place, the effectiveness of various measures is assessed and changes are made to improve results. This process, several individuals said, poses several specific challenges. For one, the Team needs sharper monitoring strategies to gauge the Plan’s ongoing effectiveness. For another, it may be difficult to assess Plan impacts within the statutorily driven timeframe. Said one Team member: “It could be years before we know for sure whether these measures are truly working.”
- ***Pressure to revise Plan.*** Several interviewees voiced concerns that early implementation results – either promising or discouraging – may lead some individuals to recommend wholesale revisions to the Plan. These interviewees strongly recommended that the Team resist such pressures. As one person put it: “The temptation to monkey around with the Plan will be great, but we need to resist. If changes are warranted, we should mess with the triggers, not revise the entire Plan.”
- ***In-state fisheries.*** Several interviewees commented on the need for the Team to begin grappling more seriously with issues related to in-state fisheries’ potential interaction with false killer whales. This is seen as particularly pressing if the insular stock is listed as endangered. Data will continue to be a challenge on this topic, several interviewees said, as the State of Hawaii currently has limited data on inshore fisheries interactions with false killer whales and funding may be needed to support new data collection protocols, as well as monitor in-state fishing activities.
- ***External factors.*** A number of interviewees noted that any one in a series of external factors could impact the Plan’s effectiveness and the Team’s focus. One person suggested, for example, that where the fleet opts to fish is likely to have a greater impact on the potential interactions than any management actions included in the draft Plan. Others cited the potential impacts of future Council actions, Amendment 18, and the insular stock listing.

Finally, several Team members urged NMFS to maintain regular communication with the Team (i.e., quarterly updates) to keep members apprised of interactions, status of proposed rule development, future meeting schedule and other related activities. Said one participant, echoing a comment heard from several others: “We need to maintain momentum and keep people engaged and on board.”

Recommendations Moving Forward

The findings from the interviews suggest the Team is well positioned to continue productive deliberations in the future. At the same time, there are areas that could prove troubling and

warrant attention. Based on Team member comments, we put forward the following recommendations for NMFS and Team members to consider:

1. ***Revisit Team membership to assess gaps.*** Team composition is strong, but NMFS should revisit membership as early as possible to: (1) confirm each participant's willingness and ability to continue serving on the Team and to attend meetings in person; (2) identify and recruit broader ethnic representation (particularly Korean-American) and, as needed, alternates; and (3) update the existing roster to reflect shifts in representation to-date (primary-alternate swaps by Lisa Van Atta/Lance Smith and John LaGrange/Jerry Ray, as well as the need to appoint new State of Hawaii representation³). There may also be a need to recruit kaka line and short-line fishermen if the Team is to begin increasing its focus on these fisheries.
2. ***Review Information-Sharing Protocols.*** Data-sharing – from what is gathered to how and when it is shared – remains problematic, with Team members having greatly varied perspectives on the extent and manner in which NMFS should bring data to the table. To prevent this from becoming a chronic challenge, we encourage NMFS to engage this issue at the next Team meeting, with an eye towards confirming agreed-upon information-sharing protocols. At its most successful, this will help build broader confidence in the data underpinning Team deliberations. At a minimum, it will help ensure all parties at least have common expectations regarding information-sharing.
3. ***Initiate data-sharing requests with State of Hawaii.*** Given the likely near-term focus on shortline and kaka line fisheries, we encourage NMFS to begin working with the State to map out information needs. NMFS may wish to convene a balanced Work Group to support and inform this effort.
4. ***Update Ground Rules.*** At the next meeting, we recommend the Team briefly revisit its existing Ground Rules to confirm or revise protocols for both information-sharing and soliciting/responding to media contact. This, we believe, is important to maintaining cohesion and preventing unintended conflicts. The Ground Rules also should be updated to step out protocols for handling situations where Team members' affiliation changes (Do they, for example, remain on the Team or should a new member be appointed? Also, what are expectations regarding informing the Team of impending changes in affiliation?)
5. ***Selective use of still stronger, more active facilitation.*** While the facilitation approaches and techniques CONCUR used got high marks, given Team members' interest in keeping deliberations as focused and on-track as possible, we propose seeking Team input on the extent to which the facilitators should be more aggressive in keeping dialogues on-point, actively facilitating cross-interest caucuses, and helping to push parties to find zones of agreement.

³ As David Nichols is no longer working for the Hawaii Department of Land and Natural Resources, a new state representative will be needed. Several Team members strongly recommended that – given the likely increased focus on kaka and shortline fisheries – NMFS try to identify a candidate with strong local fishery expertise and connections.

6. ***Initiate periodic updates.*** Given Team members interest in maintaining momentum and focus, NMFS is encouraged to distribute periodic (at least quarterly) updates that cover several topics: rule-making and Plan implementation status; research activities and findings; Team meeting schedule; and other TRP-related activities. Very-near term updates should include results of the weak hook gear research.
7. ***Begin refining measures to evaluate effectiveness.*** In anticipation of TRP rule-making and implementation, we recommend the next Team meeting include a focused discussion on refining measures to gauge effectiveness. Though the TRP included some initial recommendations regarding monitoring, more detailed consideration is needed.
8. ***Consider strategies for strengthening staff support.*** The interviews offer several suggestions for improving what was already seen as very solid staffing for the Team. This includes: (1) considering greater involvement by Sustainable Fisheries staff; (2) striving to conduct and distribute more analyses prior to Team meeting; and (3) ensuring materials distributed to the Team are accompanied by succinct summaries emphasizing the most salient findings.
9. ***Focus future meetings on Oahu.*** Given Team feedback and strong industry preference, we recommend that upcoming Team meetings generally be held on Oahu. However, to the extent the Team needs to engage in more focused deliberations (or attract participants located on other islands), NMFS should consider on a case-by-case basis the need for and benefits of shifting to a more remote location.

We welcome the opportunity to provide these findings and associated recommendations and invite your comments and questions.

Attachment 1

**FKWTRT LESSONS LEARNED REPORT
LIST OF INTERVIEWEES**

Below is a list of False Killer Whale Take Reduction Team members interviewed for this Lessons Learned Report. The interviews, conducted by phone, were confidential in order to encourage candor in Team member feedback. Seventeen of the 19 Team members were interviewed for this report.⁴

List of Interviewees:

William Aila, Hui Malama I Kohola
Robin Baird, Cascadia Research Collective
Hannah Bernard, Hawaii Wildlife Fund
Brendan Cummings, Center for Biological Diversity
Paul Dalzell, Western Pacific Fishery Management Council
Roger Dang, Pacific Fishing & Supply, Inc.
Eric Gilman, Sustainable Fisheries Partnership and Hawaii Pacific University
John Hall, F/V Zephyr
John LaGrange, F/V Janthina
Kristy Long, NMFS OPR
Kris Lynch, Marine Mammal Commission
Paul Nachtigall, University of Hawaii Marine Mammal Research Program
David Nichols, Hawaii Department of Land and Natural Resources
Tory O'Connell, Coastal Marine Research
Andy Read, Duke University
Ryan Steen, Stoel Rives LLP
Lisa Van Atta, NMFS PIRO
Sharon Young, Humane Society of the US

⁴ One Team member – Clint Funderburg – was not available to be interviewed.

Attachment 2

FKWTRT LESSONS LEARNED REPORT INTERVIEW TEMPLATE

Below is the interview instrument used to guide the Lessons Learned interviews with members of the False Killer Whale Take Reduction Team. The instrument served as a template, but each interview was unique and involved targeted follow-up questions.

1. **Overall Feedback.** Please tell us your thoughts about the Team's deliberations to-date. Were the discussions effective? What went well? What could be improved in the future?
2. **Building to and Supporting Consensus.** What, in particular, were the main factors that helped the Team reach consensus? (At the table? Away from the table?) What were the most significant barriers? (At the table? Away from the table?)
3. **Information Needs.** Was information provided in a manner and format (timely, clear, on point) that helped the Team deliberations? What worked best? What could have been done differently? Were there particular kinds of information that were particularly helpful? Any specific recommendations as we move forward? What do you see as the most pressing data and analysis gaps that need to be addressed (beyond what is already mentioned in the TRP research section)?
4. **Project Staffing.** How about NMFS's staffing of the Team? In what ways was it most effective? Any recommendations to strengthen NMFS's support of the Team's deliberations in the future?
5. **Team Composition.** Does the current TRT membership (both organizations and individuals) adequately represent the affected interests? Are any changes/additions needed? If so, what would that be and why?
6. **Meeting Management and Logistics.** We are interested in your feedback on any of the items below:
 - **Meeting Structure and Flow.** Thinking about the sequencing of the four meetings, did the Team strike the right balance of early briefings and later time for caucusing and deliberations? Did the Team have the right mix of full group versus caucus discussions? What changes would you recommend for future Team meetings?
 - **Ground Rules.** Were the Ground Rules helpful in guiding the process? What worked best? What could have been done differently? Were the Ground Rules used and adhered to consistently? Any specific recommendations as the Team moves forward?

- **Meeting Venue.** How effective were the meeting venues? What would you recommend for future meetings? On Oahu only? Rotate islands?
 - **Facilitation.** Was the facilitation effective? What changes would you recommend to improve the Team's facilitation? *[Note that NMFS will be following up directly with Team members to seek additional feedback on facilitation.]*
7. **Future Challenges.** What do you see as the primary challenges moving forward? Any thoughts on how best to overcome them?